

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 215/1999

Jabalpur : this the 24th day of July, 2003.

Shri Prem Narayan, S/o Shri Hira Lal

Aged 39 years, Khalasi

C/o Inspector of Works,

Goteagaon, Narsinghpur (MP).

..... Applicant.

(By Advocate : Shri S.P.Rai, brief holder for Smt. S. Menon).

versus

1. Union of India

Through : The General Manager,

Central Railway,

Mumbai V.T.,

2. The Divisional Railway Manager,
Central Railway, Jabalpur.

3. Assistant Engineer (South),
Central Railway, Jabalpur.

..... Respondents.

(By Advocate : Shri S.P. Sinha)

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CORAM :

HON'BLE SH. J.K.KAUSHIK, JUDICIAL MEMBER

HON'BLE SH. ANAND KUMAR BHATT, ADMINISTRATIVE MEMBER

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ORDER (ORAL)

PER MR. J.K. KAUSHIK :

Shri Prem Narayan, applicant, has filed this O.A.
and has prayed for the following reliefs :-

"(i) quash the entire selection including the written examination conducted on 2.1.99 followed by the oral interview held on 30.3.99 and the selection held thereafter and declare it as wholly illegal, unjustified, mala fide and contrary to the Service Rules and in

utter violation of the constitutional provisions,

(ii) any other order-/direction this Hon'ble Tribunal deems fit in the circumstances of the above case and in the interest of justice be awarded in favour of the applicant and against the respondents,

(iii) cost of the application be awarded to the applicant."

2. The abridged facts of this case are that applicant is employed on the post of Khalasi in category IV in the office of Inspector of Works at Gotegaon, Narsinghpur. Applications were invited from the interested persons for promotion to the post of Artisan category for filling up 25% posts under the limited departmental examinations in accordance with Para 159 of the Indian Railway Establishment Manual, Vol. I 1989 Edition. The eligibility conditions as well as the details of the various posts in the Artisan categories in addition to the vacancies to be filled in, have been mentioned in order Annexure A/1 dated 10.6.1998. The various posts for which selection was required to be conducted were Mason, Painter, Carpenter, Fitter, Welder and Striker in Grade-III. There is a specific mention in the said notification that the incumbent could fill-up the form only for one trade.

3. The applicant fulfilled the eligibility conditions and submitted his form duly filled-into the concerned authority within the prescribed time. The written examination was scheduled to be held on 2.1.1999 and name of applicant was included at Sl.No. 1 of the eligibility list. The written examination was held as per the scheduled date. Applicant appeared in the written examination and the written examination paper is placed as Annexure A/3. It has been averred that even though the individual was required to fill-up one form for one trade but the paper consisted questions relating to all the trades. It was difficult to answer the questions relating to other trade. Thereafter, result of written test was declared vide letter dated 18.3.1999 and

four candidates were declared as qualified for appearing in the interview. All the four candidates have been found successful in the interview also which was conducted on 30.3.1999. Aggrieved with the manner in which the written test as well as the interview were conducted, the applicant along with others, submitted a representation to respondent No. 2 made a complaint regarding the questions that were put to them and also the individuals who have been found successful did not even possess any field experience and they were not eligible for the same. However, the representation did not yield any fruitful result. The O.A. has been assailed on number of grounds mentioned in the O.A. The proposition of the law relating to the fairness and fair procedure required in public employment has been elaborated as part of the ground. The grounds stressed at the time of arguments on behalf of the applicant shall be dealt with at appropriate place in later part of this order.

4. A detailed reply has been filed on behalf of respondents. It is admitted that a common question paper for all trades was prepared and the same contained the questions of general nature. None of the examinees protested against such paper. The applicant also did not protest either at the time of examination or immediately after examination. It is only when applicant ~~applied~~ failed in the selection he has come up with such a plea. If any news has been published in the news paper, it must be at the instance of candidate who failed in written examination. The Trade Union made a representation on 25.4.1999 whereas, the selection panel was already published on 18.3.1999. If, there is any real grievance and any prejudice from the general paper, the said representation would have been immediately made regarding the question paper on 2.1.1999 i.e. the date of written examination. Four persons were selected from different categories but, applicant who had appeared in the test cannot make any grievance. The

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appointment to the selected candidates will be given after completion of the training. The selected candidates were all Khalesi-Helper and did not belong to any particular trade.

5. The grounds have been demied in general and it has been specifically submitted that no illegality has been pointed-out in the selection. There is no arbitrariness and all the candidates were given fair opportunity alike. Having participated in the selection test, he cannot challenge the same after becoming unsuccessful, therefore, the O.A. deserves to be dismissed. No rejoinder has been filed on behalf of the applicant.

6. We have heard the learned counsel for the parties at considerable length and have perused the records of the case. The respondents' counsel also produced the selection proceedings indicating the marks obtained by the candidates who appeared in the selection test.

7. The learned counsel for applicant has reiterated the facts and grounds raised in his pleadings and he has submitted that respondents did not disclose the syllabus for particular post and they conducted the examination for various trades on the basis of single written test. The paper which is on record, consists of questions from different category. It is not possible for a candidate to answer the questions relating to other category. If one has applied for Painter category, how he will answer the question relating to Fitter category and in this way, applicant's case was prejudiced. The moment, applicant came to know about the irregularities he has protested against the same and submitted a detailed representation but, of no avail. It has also been submitted that respondents have passed only four candidates in the written test against the requirement of four candidates and they should have passed atleast eight candidates so that a fair

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selection could have been conducted. Therefore, the selection was not conducted properly and the same should be quashed and fresh selection should be held.

8. On the contrary, learned counsel for respondents has submitted that it is wrong to contend that applicant submitted any representation immediately after the written test was held. The representation was in fact submitted only on 25.4.1999 much later than the date of written test which was held on 2.1.1999. He has also submitted that applicant has not been able to substantiate his version regarding submission of representation as contended by the learned counsel for applicant. The respondents have made clean breast of this fact in para 4.5 of their reply and the same remains unrefuted. Thus, the same has to be taken as admitted. The questions in the written paper were of general nature and none of the candidate belong to any specific category since all were holding the post of Khalasi-Khalasi Helper, so there is no question of causing any prejudice to anybody. Had the applicant also passed, he would have had absolutely no grievance and it is only when the applicant has failed in the selection, he has chosen to question the complete selection and the complete exercise is based on an after thought basis.

Otherwise also, once a candidate has appeared in an examination without any protest and he does not complaint about it till he is declared unsuccessful, he has absolutely no right to challenge the same and this position is well settled in a very recent decision of the Delhi High Court in R.P. Bhasin and Ors. Vs. D.K. Tyagi and Ors. reported in SLJ 2002 (2) 239. Thus, applicant has no case for interference by this Tribunal and DA deserves to be dismissed with costs.

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9. We have considered the rival contentions raised on behalf of both the parties. As far as the facts are concerned, there is hardly any dispute. The applicant was allowed to undertake the written test which was held on 2.1.1999 along with the other similarly situated persons. He appeared in the written test. Thereafter, result was declared on 18.3.1999 and applicant has made no protest or complaint against the same. Thereafter, Viva Voce was held and that was also finalised and then only a representation was made through the Trade Union. Thus, applicant did not immediately make any protest in the matter and learned counsel for respondents' contended that it is only an after thought exercise and once the applicant has failed then only he made a complaint, is well founded.


10. Now, adverting to other contentions. As regards the written test, it is also not in dispute that all the candidates who appeared in the examination, did not belong to any particular trade and they were Khalasies and Khalasi Helpers and attended a common paper without any complaint. We have not been shown any law on behalf of applicant that respondents should have conducted the examination in a particular manner by taking separate trade tests and also minimum eight persons for four vacancies would have been passed. There are number of trades involved in this case and we take notice of the fact that the persons who are selected will be imparted different training for particular trade and only after passing such training in particular trade, they are to be given offer of appointment and by the examination which is part of selection, their general aptitude and suitability for the trade is to be adjudged and it was not something like a trade test for a particular category. There is no law that a particular number of persons should be passed least to say eight persons for four posts. Incidentally, in present case against four vacancies, four candidates qualified in written

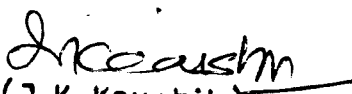
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test that is also not necessary that it must be more. The qualifying marks have been prescribed and whoever qualifies, will be declared as pass and it is not for the selection board to pass even a failed candidate so as to reach to a certain minimum number of persons to be passed in the written test. Thus, contention of the applicant stands repelled and has absolutely no substance.

11. As regards the challenge to selection proceedings by a failed candidate are concerned, the law on this point is well settled in a catena of judgements even at the level of Hon'ble the Supreme Court. Relying on judgement of Hon'ble the Supreme Court in Madan Lal Versus State of J.& K. reported in AIR 1985 SC 1088 and Om Prakash Shukla Versus Akhilesh Kumar Shukla reported in AIR 1986 SC 1043, the Delhi High Court has held ~~that~~ in R.P.Bhasin's case (supra) that having appeared in a selection, one cannot challenge it later and this is the case on which the reliance has been placed by learned counsel for respondents. The said issue does not remain res integra and no relief can be granted in such cases. Thus, this contention ~~also supports the defence~~ and the O.A. has no force. No interference is called for by this Tribunal as no prejudice has been caused to the applicant and in our considered opinion, the very O.A. is mis-conceived.

12. In the premises, the OA is devoid of any merit and substance. The same fails and stands dismissed. However, in the facts and circumstances of the case, the parties are left to bear their own costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member

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Issued
on 01-8-03
BS

पूठकन सं ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अर्पित:-
(1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
(2) जलेश्वर सिंह/सीता देवी, पु.....के काउंसल Smt. S. mona, Adl.
(3) सचिव, जिला न्यायालय, जबलपुर जलेश्वर सिंह
(4) जिला न्यायालय, जबलपुर जलेश्वर सिंह के काउंसल S.P. Simha Adl.
सूचना एवं जागरूकता कार्यवाही हेतु
प्रति सदस्य
1.8.03